

### **REMARKS/ARGUMENTS**

Claims 1-3, 6, 7, 10-16, 18, 19, 21, 22, and 24-28 are rejected. Claims 4, 8, 9, 17, 20, 23, and 29-42 have been canceled.

#### **Claim Rejections - 35 U.S.C. §103(a)**

Claims 1-3, 6, 7, 10-12, 15, 16, 18, 19, 21, 22, and 24-26 are rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,660,039 to Evans et al. ("Evans '039") in view of U.S. Patent Publication No. 2004/0186584 to Keller ("Keller '584").

Evans '039 discloses mobile bearing knee prosthesis 10, shown in Fig. 1, that includes tray 13 and insert 28. Tray 13 includes post 18 extending upwardly therefrom that is configured for receipt within vertical channel 33 of insert 28. With post 18 of tray 13 positioned within vertical channel 33 of insert 28, insert 28 may be rotated and translated atop tray 13. Additionally, by inserting fastener 24 within vertical channel 33 and threadingly engaging the same to post 18 of tray 13, translation of insert 28 relative to tray 13 is prevented. In an alternative arrangement, as shown in Figs. 18-25, post 18 may be replaced by interchangeable posts 42, 49, 53, and 59, which may be received within a recess in base plate 13 and are configured to extend into square opening 64 in insert 28. By interchanging posts 42, 49, 53, and 59, insert 28 may be configured for different combinations of rotation and translation relative to tray 13, as shown by the arrows (or lack thereof) in Figs. 22-25. Specifically, by interchanging posts 42, 49, 53, and 59, insert 28 may be configured to rotate but not translate, neither rotate nor translate, translate but not rotate, or both rotate and translate, respectively, atop tray 13.

Keller '584 discloses a knee prosthesis, as shown in Fig. 1, including tibial component 1 and femoral component 3. Femoral component 3 is secured to tibial component 1 by pin stumps 12, 13 of tibial component 1, as shown in Figs. 2 and 6. Specifically, pin stumps 12, 13 may be retracted to allow for femoral component 3 to be positioned atop tibial component 1. Then, pin stumps 2, 3 may be allowed to extend outwardly and into recesses in femoral component 3 to secure tibial component 1 and femoral component 3 together. To separate tibial component 1 and femoral component 3, portions of retaining device 23, shown in Fig. 9, are inserted into openings 25 of tibial component 1 to retract pin stumps 12, 13.

Applicants respectfully submit that independent Claims 1 and 15 are not obvious over Evans '039 in view of Keller '584. Specifically, independent Claim 1 calls for a device including, *inter alia*, a first tibial base plate comprising an upper surface, a lower surface, and an outer perimeter side surface extending between the upper surface and the lower surface of the first tibial base plate, an insert comprising an upper surface, a lower surface, and an outer perimeter side surface extending between the upper surface and the lower surface of the insert, the insert and the first base plate having a first configuration, wherein the insert is translationally fixed to the first base plate and rotatable relative to the first base plate and at least one removable pin having a first portion and second portion, the first portion of the pin configured to engage an opening formed in the outer perimeter side surface of the first base plate and the second portion of the pin configured to engage an opening formed in the outer perimeter side surface of the insert to thereby prevent relative rotation between the insert and the first base plate.

Similarly, independent Claim 15 calls for a device including, *inter alia*, a first base plate comprising an upper surface, a lower surface and an outer perimeter side surface extending between the upper surface and the lower surface of the first base plate, an insert comprising an upper surface, a lower surface, and an outer perimeter side surface extending between the upper surface and the lower surface of the insert, the insert and the first base plate having a first configuration, wherein the insert is translationally fixed to the first base plate and rotatable relative to the first base plate, and a removable means for preventing relative rotation between the insert and the first base plate, wherein, when installed, a first portion of the removable means is configured to engage an opening formed in the outer perimeter side surface of the first base plate and the second portion of the removable means is configured to engage an opening formed in the outer perimeter side surface of the insert to thereby prevent relative rotation between the insert and the first base plate.

In forming the rejection, the Examiner indicates that Evans '039 fails to disclose a "pin being located in [an] outer perimeter side surface" of plate 13 and insert 28, as called for in independent Claims 1 and 15. Thus, the Examiner relies on the teachings of Keller '584 for providing this disclosure. Assuming, *arguendo*, that the Examiner's combination of Evans '039 and Keller '584 is proper, moving pin 49 of Evans '039 to an outer surface of tibial base plate 13

and insert 28 and eliminating square opening 64 in insert 28 and a corresponding recess in base plate 13 would destroy the function of the device of Evans '039. Specifically, the device of Evans '039 is designed to allow for interchangeable posts 44, 49, 54, and 59 to be used to create differing combinations of rotation and translation of insert 28 relative to base plate 13. By placing an opening for the receipt of interchangeable posts 44, 49, 54, and 59 in the outer perimeter side surface of one of insert 28 and base plate 13 and eliminating opening 64 in insert 28 and a corresponding recess in base plate 13, the device of Evans '039 would fail to achieve this purpose.

Moreover, even if opening 64 in insert 28 and a corresponding recess in base plate 13 of the device of Evans '039 were not eliminated, a person of ordinary skill in the art would have no motivation to create an additional opening in the outer perimeter side surface of insert 28 and base plate 13 for the receipt of post 49. The device of Evans '049 provides a simple solution for allowing a single base plate and insert to achieve a variety of rotational and translational configurations. As the device of Evans '039 is designed, a single post, i.e., post 49, is used to prevent rotation and translation of insert 28 relative to base plate 13. In contrast, by adding an additional opening in an outer perimeter side surface of insert 28 and base plate 13, the Examiner increases the complexity of the device of Evans '049 by requiring the use of two posts, without providing any additional benefits. This increase in the complexity of the device of Evans '049 would be counter-indicated to a person having ordinary skill in the art. Moreover, the Examiner provides no rational basis for why a person of ordinary skill in the art would make the suggested combination.

Specifically, in order to prevent both translation and rotation of insert 28 relative to base plate 13, the device of Evans '049 as modified by the Examiner would now require the use of two posts. The first post would be positioned within opening 64 in insert 28 and a corresponding recess in base plate 13 to limit translation of insert 28 relative to base plate 13. Then, a second post would have to be inserted into the outer perimeter side surface of insert 28 and base plate 13 to prevent rotation of insert 28 and base plate 13 relative to one other. Absent the use of a first post, the second post positioned within an outer perimeter side surface of insert 28 and base plate 13 would fail to prevent translation of insert 28 relative to base plate 13. As a result, insert 28

Application Serial No. 10/771,887  
Amendment dated March 11, 2009  
Reply to Office Action dated November 26, 2008

could translate in an unrestricted manner atop base plate 13, potentially causing the tibial prosthesis of Evans '049 to fail.

For at least the foregoing reasons, Applicants respectfully submit that independent Claims 1 and 15, as well as Claims 2, 3, 6, 7, 10-14, 16, 18, 19, 21, 22, and 24-28, which depend therefrom, are not obvious over Evans '039 in view of Keller '584.

Claims 13 and 27 are rejected under 35 U.S.C. §103(a) as being obvious over Evans '039 in view of Keller '584 in further view of U.S. Patent No. 6, 306,172 to O'Neil et al. ("O'Neil '172").

In forming the rejection of Claims 13 and 27, which depend from independent Claims 1 and 15, respectively, the Examiner relies on Evans '039 and Keller '584 as disclosing or suggesting each and every limitation of independent Claims 1 and 15. However, for the reasons set forth above with respect to independent Claims 1 and 15, Evans '039 and Keller '584 fail to disclose or suggest each and every limitation of independent Claims 1 and 15. The Examiner's additional citation of O'Neil '172 fails to overcome this deficiency, as none of Evans '039, Keller '584, or O'Neil '172 disclose or suggest each and every limitation of independent Claims 1 and 15.

For at least the foregoing reasons, Applicants respectfully submit that Claims 13 and 27, which depend from independent Claims 1 and 15, respectfully, are not obvious over Evans '039 in view of Keller '584 in further view of O'Neil '172.

Claims 14 and 28, which depend from independent Claims 1 and 15, respectively, are rejected under 35 U.S.C. §103(a) as being obvious over Evans '039 in view of Keller '584 in further view of U.S. Patent No. 5,658,344 to Hurlburt ("Hurlburt '344").

In forming the rejection of Claims 14 and 18, which depend from independent Claims 1 and 15, respectively, the Examiner relies on Evans '039 and Keller '584 as disclosing or suggesting each and every limitation of independent Claims 1 and 15. For at least the reasons set forth above with respect to independent Claims 1 and 15, Evans '039 and Keller '584 fail to disclose or suggest each and every limitation of independent Claims 1 and 15. The Examiner's further citation of Hurlburt '344 fails to overcome this deficiency, as none of Evans '039, Keller

Application Serial No. 10/771,887  
Amendment dated March 11, 2009  
Reply to Office Action dated November 26, 2008

'584, or Hurlburt '344 disclose or suggest each and every limitation of independent Claims 1 and 15.

For at least the foregoing reasons, Applicants respectfully submit that Claims 14 and 28, which depend from independent Claims 1 and 15, respectively, are not obvious over Evans '039 in view of Keller '584 in further view of Hurlburt '344.

### **CONCLUSIONS**

It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicants respectfully submit that the application is in condition for allowance and respectfully requests allowance thereof.

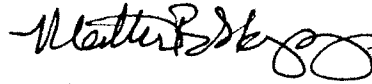
In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

Application Serial No. 10/771,887  
Amendment dated March 11, 2009  
Reply to Office Action dated November 26, 2008

Should the Examiner have any further questions regarding any of the foregoing, she is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



Matthew B. Skaggs  
Registration No. 55,814

Attorney for Applicants

MBS

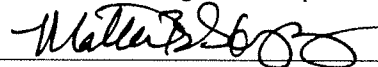
BAKER & DANIELS LLP  
111 East Wayne Street, Suite 800  
Fort Wayne, IN 46802  
Telephone: 260-424-8000  
Facsimile: 260-460-1700

CERTIFICATION OF ELECTRONIC FILING

I hereby certify that this correspondence is being electronically filed with the United States Patent and Trademark Office on the date indicated below:

\_\_\_\_\_  
MATTHEW B. SKAGGS, REG. NO. 55,814

Name of Registered Representative



\_\_\_\_\_  
Signature

\_\_\_\_\_  
March 11, 2009

Date